

**STATE OF MAINE
SUPREME JUDICIAL COURT**

ADMINISTRATIVE ORDER JB-08-2 (A. 2-10)

**ESTABLISHMENT OF THE CUMBERLAND COUNTY
UNIFIED CRIMINAL DOCKET**

Effective: March 1, 2010

This order amends Exhibit A (UCD Rules of Procedure) to JB-08-2, Establishment of the Cumberland County Unified Criminal Docket, which was signed December 31, 2008, and effective January 1, 2009.

Through an amendment of Exhibit A (UCD Rules of Procedure) to the Administrative Order (JB-08-2) establishing the Cumberland County Unified Criminal Docket, the following amendments to the Cumberland County UCD Rules of Procedure are hereby adopted to be effective on the date indicated above. The specific rules amendments are stated below. To aid in understanding of the amendments, Advisory Notes appear after the text of the amendments. The Advisory Notes state the reason for recommending the amendments, but they are not part of the amendments adopted by the Court.

1. Rule 18 of the Cumberland County UCD Rules of Procedure is amended to read as follows:

RULE 18. DISPOSITIONAL CONFERENCE

. . . .

(e) **No agreement; subsequent proceedings.** If the parties ~~fail to~~ do not reach a plea agreement, the matter shall be set for jury trial, unless the defendant waives his or her right to a trial by jury or unless the charge is a civil violation. If the defendant waives his or her right to a trial by jury pursuant to UCD Rule 23(a), the matter shall be set for a jury-waived trial. If the charge is a civil violation triable of right by a jury, the matter shall be set for a jury-waived trial, unless the defendant files a demand for a jury trial and pays the \$300 jury fee no later than seven days after the dispositional conference, pursuant to M.R. Civ. P. 38.

. . . .

**Advisory Note
February 2010**

This amendment recognizes that individuals facing criminal charges may choose to have their cases heard by a judge, rather than by a jury, and refers to the UCD rule containing the waiver procedure. It also clarifies the procedure to be used in scheduling non-criminal matters for trial.

2. Rule 46 of the Cumberland County UCD Rules of Procedure is amended to read as follows:

**RULE 46. CERTAIN PROCEDURAL PROVISIONS
GOVERNING BAIL**

. . . .

(d) De Novo Re-determination of Bail. Any defendant charged with a crime bailable as of right who is aggrieved by a decision of a justice or judge made at arraignment or initial appearance as to the amount or conditions of bail set may file one petition for de novo re-determination of bail. Such petition must be filed with the court no later than 14 days before the date set for the defendant's disposition conference. If the defendant is incarcerated, hearing on the petition shall be scheduled before any justice or judge within 48 hours of filing, excluding Saturdays, Sundays, legal holidays, and court holidays. For a defendant who is in custody, the court shall provide notice of the hearing to the attorney for the state at least 24 hours before the hearing. If the defendant is not in custody, hearing on the petition shall be scheduled within 7 days after it has been filed. For a defendant who is not in custody, the court shall provide notice of the hearing to the attorney for the state at least 72 hours before the hearing. The justice or judge shall review the petition and, after providing the parties with an opportunity to be heard, may set bail in any manner authorized by title 15, section 1026.

~~(d)~~(e) Review of Bail by or Appeal to a Single Justice of the Supreme Judicial Court.

(1) *Petition.* A petition for review of pre-conviction bail under 15 M.R.S. § 1029 shall be filed in the Unified Criminal Docket. The clerk shall promptly deliver a copy of the petition to any Justice of the Supreme Judicial Court

designated by a general order or special assignment of the Chief Justice to sit in single justice matters in that county. On receipt of the petition, the trial court's order and the available record of the hearing below, the assigned Justice will either conduct a hearing de novo or conduct a review, depending upon what is required under the law. Briefing and oral argument may be dispensed with by the assigned Justice.

(2) *Appeal.* An appeal of post-conviction bail under 15 M.R.S. § 1051, or an appeal of revocation of pre-conviction bail under 15 M.R.S. § 1097 or revocation of post-conviction bail under 15 M.R.S. § 1099-A shall be taken by filing a notice of appeal with the clerk of the Unified Criminal Docket. The clerk shall promptly deliver a copy of the notice to any designated Justice of the Supreme Judicial Court. On receipt of the notice of appeal, the trial court's order and the available record of the hearing below, the assigned Justice shall review the record and, with or without briefing or argument, determine whether the trial court's order is without a rational basis.

~~(e)~~(f) **Statement to Person Offering Surety for a Defendant.** Every judicial officer or clerk who accepts property, including money, as security for bail shall first provide to the prospective surety the oral and written advice required under 15 M.R.S. § 1072-A(2) and (3) respectively, as well as a copy of the written release order pertaining to the defendant required under 15 M.R.S. § 1072-A(1).

~~(f)~~(g) **Forfeiture.**

(1) *Declaration.* If there is a breach of condition of a bond, the court shall declare a forfeiture of the bail and give prompt notice to the obligors.

(2) *Setting Aside.* The court may direct that a forfeiture be set aside, upon such conditions as the court may impose, if it appears that justice does not require the enforcement of the forfeiture.

(3) *Enforcement.* When no motion to set aside a forfeiture has been made within 30 days of notice of the declaration of forfeiture, the court shall enter a judgment of default and execution may issue thereon. By entering into a bond the obligors submit to the jurisdiction of the court and their liability may be enforced on motion without the necessity of an independent action.

(4) *Remission.* After entry of such judgment, the court may remit it in whole or in part under the conditions applying to the setting aside of forfeiture in paragraph (2) of this subdivision.

(g)(h) Exoneration. When the condition of the bond has been satisfied, the court shall exonerate the obligors and release any bail.

(h)(i) Bail for Witness. If it appears by affidavit that the testimony of a person is material in any criminal proceeding and if it is shown that it may become impracticable to secure that person's presence by subpoena, the court may order the arrest of that person and may require that person to give bail for his or her appearance as a witness. If the person fails to give bail the court may commit that person to the custody of the sheriff pending final disposition of the proceeding in which the testimony is needed, may order that person's release if he or she has been detained for an unreasonable length of time and may modify at any time the requirement as to bail.

If a witness is committed for failure to give bail to appear to testify at a trial or hearing, the court on written motion of the witness and upon notice to the parties may direct that the witness' deposition be taken. After the deposition has been taken the court may discharge the witness.

**Advisory Note
February 2010**

This amendment creates a procedure for de novo determination of bail, as required by 15 M.R.S. § 1028, while recognizing that the distinctions between the District and Superior Courts articulated by that statute do not exist within the Portland Unified Criminal Docket.

3. These amendments shall be effective on March 1, 2010.

FOR THE COURT,

/s/
Leigh I. Saufley Chief Justice

Promulgation Date: February 18, 2010

HISTORICAL DERIVATION of JB-08-2:

Establishment of the Cumberland County Unified Criminal Docket
AO JB-08-2, Dated December 31, 2008, and effective January 1, 2009
Signed by: Leigh I. Saufley, Chief Justice